

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2353 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHUBHAI SOMABHAI PATEL SON IN LAW OF VINITABEN

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR NM KAPADIA for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/12/1999

ORAL JUDGEMENT

#. The detenu-Vanitaben, wife of Ramanbhai Jogibhai Patel, has been detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short), by virtue of an order passed by the Commissioner of Police, Surat City, Surat, on March 9, 1999, in exercise of powers under Section 3(1) of the PASA Act.

#. In the grounds of detention, the detaining authority took into consideration the two offences registered against the detenu under the Bombay Prohibition Act. The authority also considered statements of two anonymous witnesses whose identity has not been disclosed by the detaining authority exercising privilege under Section 9(2) of the PASA Act. The detaining authority recorded a subjective satisfaction that the activities of the detenu have resulted into disruption of public order. The detenu is found to be a bootlegger and is required to be immediately prevented from pursuing her illegal activities. Resorting to less drastic remedies is not possible and, therefore, detention under PASA Act is the only remedy available.

#. The petitioner has preferred this petition to assail the order of detention on various grounds. One of the grounds that is raised in the petition and relied upon by the learned advocate, Mr. N.M. Kapadia, for the petitioner is that the statements of both the witnesses were verified on March 9, 1999 and the order came to be passed on the same day and, therefore, the authority could not have applied its mind as the grounds of detention run into about 32 pages. The authority would have needed time to consider the grounds and to strike a balance between the public interest and the right of the detenu and, therefore, the order is bad.

#. Mr. Kapadia, while relying upon the above ground, has pressed into service the decision of this High Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat, 1993 (2) GLR 1659.

#. The petition is opposed to by learned Assistant Government Pleader, Mr. Patel. He submitted that, factually, it is true that date of verification and date of passing of the order are the same. But this may not be taken as non-application of mind. Considering the urgency, the order was passed quickly.

#. It may be noted that the detaining authority has not filed any affidavit in reply and, therefore, the Court is at loss to appreciate how the detaining authority could have passed this order on the very day of verification. The authority is expected to apply mind, consider the facts situation in respect of the petitioner as well as public at large and then strike a balance between public interest on one hand and interest/right of the petitioner on the other. There is nothing on record to indicate as to how the subjective satisfaction is arrived at by the detaining authority in exercise of

powers under Section 9(2) of the PASA Act except that the statements of the witnesses have been verified. In this view of the matter, considering the case of Kalidas Chandubhai Kahar (supra), the petition deserves to be allowed.

#. In the result, the petition is allowed. The order of detention dated 9th March, 1999, in respect of the detenu-Vanitaben, wife of Ramanbhai Jogibhai Patel, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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